

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT

FILED
SCRANTON

IN RE: ERIK FUNK V. C/O SILVERIO, et al.

MAY 12 2021

PER

DEPUTY CLERK

ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING ORDER

UPON CONSIDERATION AND SUPPORTING DECLARATION
OF PLAINTIFF AND THE ACCOMPANYING MEMORANDUM OF
LAW IT IS

ORDERED THAT DEFENDANTS C/O SILVERIO AND STE
ZITO SHOW CAUSE IN THE UNITED STATES
COURTHOUSE, 235 NORTH WASHINGTON AVENUE,
SCRANTON, PA 18501 ON THE DAY OF _____,
AT _____ AM/PM WHY A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE PURSUANT TO RULE 65(a), FED
R. CIV. P., enjoining the said defendants, their
successors in office, agents, and employees and
all other persons acting in concert and
participation with them, to provide a medically
appropriate course of physical therapy to the
plaintiff design to restore and maintain the full
function of his ankles, wrist, and eye that
were closed shut by C/O SILVERIO and complete
body pain/shock.

IT IS FURTHER ORDERED THAT EFFECTIVE IMMEDIATELY
AND PENDING THE HEARING AND RECONSIDERATION OF THIS
MATTER, DEFENDANTS SILVERIO AND ZITO SHALL ARRANGE
FOR PLAINTIFF TO BE EXAMINED BY A LICENSED EYE DR.
HEARS ABOUT SPECULUM, and qualified orthopedic DR.
and to obtain from those specialist an evaluation
of the conditions of plaintiff's ankles, wrist, head,

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and eye closed shut and a prescription for
a course of physical therapy for his body that
will restore and maintain the full function of
ankles, wrist, hand, body, and eye closed shut

It is further ordered that this order to show
cause, and all other papers attached to this
application shall be served on C/O SILVERIO, SGT.
ZITO by _____ and the United States
Marshals Service is hereby directed to effectuate
such service

United States
District Judge

ref 2
11.2

and I suffer irreparable harm if my conditions are not thoroughly treated for this physical and mental pain and suffering

7) together PrimeCare and Warden Heidle together they can come together to get me the proper medical treatment I need from this brutal assault

8) For the reasons set forth in the memorandum of law filed with this motion I'm entitled to a TPO for Silverio and Zito and for arrangements to be made to immediately take me to prison medical center for emergency medical care and for a preliminary injunction for PrimeCare and Warden Heidle to give me proper medical treatment and keep Silverio and Zito away from me

9) For these reasons, the court should grant the plaintiffs motion in all aspects

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury that the foregoing is true and correct

Respectfully Submitted

✓ Erik C. Funk

✓ ^{STENO} Wm C. Evans

^{PRISON}
Date: 5-8-21

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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT

IN RE Funk v. $\%$ Silverio, et al. #

MEMORANDUM OF DECISION

IN SUPPORT OF TRO AND IN SUPPORT OF PRELIMINARY INJUNCTION

Statement of Case:

This civil action brought under 28 U.S.C. 1983 by prisoners who head was bashed in, eye closed shut, and injuries on the ankle and wrist, and still depriving me appropriate medical care, plaintiff seeks a TRO and preliminary injunction to be separated from Set Zito and $\%$ Silverio and to receive proper medical care.

Statement of Facts:

As stated in the declaration submitted with this motion, $\%$ Silverio and Set Zito assaulted me while in shackles and handcuffs, I was denied medical treatment by Nurse Daily, defendants are not providing proper medical care for his pain and suffering, stiffness, closed eye shut, head injuries, body pain, and wrist and ankle pain. In fact, defendants are trying to cut it up and why I need immediate medical care/mental and physical therapy, and to continue to deprive of medical care, I will suffer irreparable harm.

Argument

Point 1, the Plaintiff is entitled to a temporary

restraining order and a preliminary injunction - in determining whether a party is entitled to a TRO or a preliminary injunction, courts generally consider several factors, whether the party ~~will~~ will suffer irreparable injury, the balance of hardships between the parties, the likelihood of success on the merits, and the public interest. Each of these factors favor grant of this motion.

(c) The plaintiff alleges that he was brutally assaulted, deprived medical care to his serious medical need contrary to his injuries and such conduct to assault on inmate (AS) AM SCARD and SILVERO and know HE WILL DO IT AGAIN AND HARASSER AND CHASE HER ABOUT THE (K) AND US DAILY COURT VISITOR of 8th AUGUST AND 14th AUGUST VISITORS. Estelle v. Gamble, 429 US 97 - that intentional interfering with treatment that needs to be prescribe is a form of unlawful deliberate indifference. AS a matter of law, the continued deprivation of constitutional rights constitutes irreparable harm. In addition, the plaintiff is threatened with irreparable harm (RESCUE) because SET 2 is now wants to harass me, they 2 is and SILVERO are assaulting inmates committing crimes, and to nature of my injuries that requires emergency medical treatment that if I do not receive proper treatment at the proper time, I can die, I'm in pain, it hurts. I need to go to the hospital.

(d) In deciding whether to grant a TRO and

preliminary injunction, courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984) - holding that ~~the state's interest in safety and medical~~ prisoners' interest in safety and medical outweighed states' interest in ~~not~~ saving money by cutting staff.

the present suffering (pain and mental anguish and harassment by Zito who think has unfounded due to the (now) assaulting inmates) and my potential suffering if I permanently lose my eye or my head and body injuries become permanent. The suffering (in experience) if the court grants the order will consist of taking plaintiff to the hospital or suitably Dr. then carrying out Dr. orders, and to completely separate me from Sgt Zito and Silverio who should be barred from entering the building to stop the assaults, harassment, and intimidation by these guards and my hardship amounts to no more than business as usual.

(c) I will likely proceed on the merit and which defendant daily did ~~was~~ intentionally interfere with medical treatment, intentionally brutal assault by Zito and Silverio which is all unconstitutional to a person's defense and the relief sought will serve the public interest. This is known from our Supreme Court stating - THE CONSTITUTION IS THE ULTIMATE EXPRESSION OF THE PUBLIC INTEREST AND THESE BRUTAL ASSAULTS OF ME AND OTHERS AND GO'S TOLERANCE OF THEM ARE

above the law committing crimes and depriving
 of medical care to cover up what was done to
 me and the serious medical dangers
 confronting the plaintiff, this brutal assault
 on my head, body, and my eye completely
 shut while in handcuffs and shackles. I'm
 scared, and this is not an isolated incident,
 this court should grant the relief requested
 or I risk being killed, mentally damaged,
 harassed, and I will be continued assaulted while
 in shackles and handcuffs

for the foregoing reasons, the court
 should grant the motion for 2nd Preliminary
 injunction in its entirety or whatever the court
 deems just

- Relying on *Flowers v. PHS*, 954 F.2d 488, 489
 5th Cir 1992; *Cooper v. Casey*, 97 F.2d 914, 919-20
 7th Cir 1996; *Hickson v. Tiscot*, 241 F.Supp. 2d 1313,
 1319, 1323 S.Kan 2003; *Miller v. Shelby County*, 98 F.
 Supp. 2d 892, 902 W.D. Tenn 2000; *Staub v. Morge*,
 805 F.2d 1467, 1468 11th Cir 1987; *Lewis v. Cooper*, 771
 F.2d 334, 335 7th Cir 1985; AND PUNITIVE DAMAGES
 NEED TO BE AWARDED to punish them for their
 actions and suppose to STINK so as to deter a
 defendants reprehensible conduct. And as in
Walker v. Morris, 917 F.2d 1449, 1459 - while guards
 looked on and did nothing to watch Zito and
 Silveio brutally assault me, the use of excessive
 force to cause serious injury to deprive a needed
 care I pray, this court grant me a 2nd
 and preliminary injunction against Zito and Silveio

DACD:

Respectfully Submitted
 ✓ Erik C. Funk
 ✓ SIGN /M/ C MW
 PEW

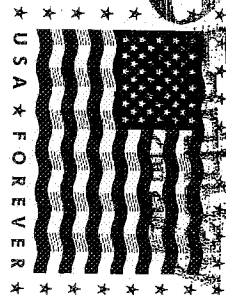
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Stoughton, MA 01560

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10 MAY 2021 PM



Office of the Clerk

UNITED STATES DISTRICT COURT

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Middle District of Pennsylvania
William J. Nealon Federal Bldg. and U.S. Courthouse

MAY 12 2021

235 North Washington Avenue

P.O. Box 1148

Scranton, PA 18501-1148

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